

S.B.CIVIL WRIT PETITION NO.385/2001

Chand Ratan Rathi Vs. State of Rajasthan & Ors.

DATE OF ORDER :: 01.08.2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Bishnoi, for the petitioner.

Mr. B.L. Tiwari, Dy. Govt. Advocate.

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As per the notification dated 31.3.1997 issued by the Government of Rajasthan exercising powers under Section 4B of the Rajasthan Motor Vehicles Taxation Act, 1951 the bus No.RJ-07-P-1771 was subjected to special road tax at the rate of 7% of the cost of chassis by keeping the bus concerned under ordinary category. The rate of tax was revised under a notification dated 24.3.1999 and the petitioner satisfied the tax relating to the bus referred above at the rate of 10%. However, by a notice dated 6.1.2001 the District Transport Officer, Bikaner made a demand of Rs.32,102/- from the petitioner by computing tax at the rate of 16% by treating the bus in dispute under "education category". By this petition for writ challenge is given to the demand aforesaid on following grounds:

- (a) The bus No.RJ-07-P-1771 being registered as ordinary bus could have not been treated as a bus other than ordinary bus.
- (b) The classification made under the notification dated 24.3.1999 is without jurisdiction as the tax under Section 4B of the Act of 1951 can be settled for "transport vehicles only" and further categorisation therein is not permissible.

A reply to the writ petition has been filed on behalf of the respondents in general defending the demand impugned.

Heard counsel for the parties.

Section 4B of the Act of 1951 prescribes for special road tax which reads as under:

“4B. Special Road Tax. In addition to the tax levied under section 4 and subject to the rules as may be made by the State Government in this behalf, there shall be levied and paid to the State Government a special Road Tax on all transport vehicles {except those three wheeled passenger vehicles with a seating capacity upto 4 excluding driver which have paid one time tax payable under clause (e) of sub-section (1) of Section 4} at the rates as may be specified by notification in the official gazette, by the State Government which shall not exceed [Rs.2,000/- per day in respect of passenger vehicles and shall not exceed Rs.250/- per thousand kg. of load carrying capacity or part thereof for thirty days in respect of goods vehicles of other States or for vehicles plying on temporary permits of this State, and [not exceeding 5% of the cost] of the chassis/vehicle per month in respect of other vehicles.”

From perusal of the provisions of Section 4B it is apparent that the State Government is empowered to levy special tax on all transport vehicles. The term “transport vehicles” is not defined or interpreted under the Act of 1951, however, as per the provisions of clause(e) of Section 2 of the Act of 1951 the words and expression used but not defined under the Act of 1951 shall have the meaning assigned to them under Motor vehicles Act, 1988 and Central Motor Vehicles Rules, 1989. The term “transport vehicles” is defined under Section 2(47) of the

Motor Vehicles Act, 1988 and that reads as follows:

“Section 2(47) “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.”

According to the definition referred above a transport vehicle includes a public service vehicle, a goods carriage and educational institution bus or a private service vehicle. All the terms referred above are also defined under Motor Vehicles Act and thus are as follows:

“Section 2(35) “public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;

Section 2(14) “goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

Section 2(11) “educational institution bus” means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;

Section 2(33) “private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.”

In entire Motor Vehicles Act, 1988 or Central Motor Vehicles

Rules, 1989 no categorisation of motor vehicles in terms of “ordinary” or “other than ordinary” is prescribed. Such classification is made by the State Government under the notification issued for determining special road tax as per Section 4B. As a matter of fact Section 4B empowers State Government only to levy special road tax and not for categorisation of transport vehicles. The State Government is certainly having a power under the Act of 1951 to frame rules regulating the method of determining demand and recovery of tax and government framed the Rules viz. the Rajasthan Motor Vehicles Taxation Act, 1951 but under these rules too no power is given to the State Government to categorize transport vehicles as “ordinary” or “other than ordinary” vehicles for determination of tax. In such circumstances the categorization of vehicles as “ordinary” or “other than ordinary” while exercising powers under Section 4B of the Act of 1951 is apparently without jurisdiction.

It is stated by learned Dy. Govt. Advocate that as the statute is silent about categorization, therefore, the State Government supplemented the same by issuing the notifications and thus rightly made categorization of the vehicles. I do not find any substance in the argument advanced. Section 4B of the Act of 1951 in most unambiguous terms prescribes and empowers the State to levy special tax from transport vehicles, thus, a tax on the transport vehicles categorized as

per Section 2(47) of the Act of 1988 could have been imposed but while exercising powers under Section 4B of the Act of 1951 no further categorization could have been made. Thus, the categorization made by the State Government beyond the transport vehicles under Section 4B of the Act of 1951, is illegal, pertinent to note here that even under the Rules of 1951 no categorization as “ordinary” or “other than ordinary” vehicles is prescribed for determination of special road tax.

In view of it, I am satisfied that the categorization made by the State Government in the terms “ordinary” or “other than ordinary” vehicles while exercising powers under Section 4B of the Act of 1951 is unauthorised, and therefore, the same deserves to be declared illegal.

Accordingly, this petition for writ is allowed. The categorization of vehicles as “ordinary” or “other than ordinary” under the notification dated 24.3.1999 is illegal and the same, therefore, is quashed. The respondents may levy special tax on the petitioner by treating it as transport vehicle only without making further categorization as “ordinary” or “other than ordinary”. Accordingly, the demand made by the District Transport Officer, Bikaner is also quashed. No order as to cost.

(GOVIND MATHUR), J .

jgoyal